

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Marriage of MARIA and MARC
ANGELL.

2d Civil No. B259073
(Super. Ct. No. D305382)
(Ventura County)

MARIA ANGELL,

Respondent,

v.

MARC ANGELL,

Appellant.

This case arises from the dissolution of the parties' marriage. Marc Angell (husband) received a greater share of the community property than Maria Angell (wife). To equalize the division of the community property, husband agreed to make monthly payments to wife. Years after the entry of the judgment of dissolution, husband petitioned for protection from creditors under chapter 13 of the Bankruptcy Code. The bankruptcy court permitted the parties to seek clarification in state court of the nature of husband's prepetition debts. Husband appeals from the trial court's clarification order determining that his obligations to make the monthly equalizing payments and to pay wife's attorney fees "serve a domestic support function." If the bankruptcy court were to accept the trial court's characterization of these obligations, they would not be dischargeable. We affirm.

Factual and Procedural Background

The parties married in September 1996 and separated in November 2005. They have two children. The marriage was dissolved in June 2006. The judgment of dissolution incorporates a marital settlement agreement (MSA). Husband agreed to pay child support of \$2,000 per month. He also agreed to start paying spousal support "in approximately twelve months in an amount to be determined at that time." Spousal support would continue for up to 54 months. The court retained "jurisdiction over the issue of spousal support until the death of either party, remarriage [of] the party requesting support or further order of the court, whichever shall first occur."

The MSA awarded the family residence (residence) to husband. The parties agreed that the fair market value of the property was more than \$1.8 million and their equity was approximately \$695,000. To equalize the division of the community property, the MSA required husband to pay wife \$418,250. Husband had already paid \$48,613 of this amount. The remainder was to be paid in monthly installments of \$6,000 without interest. In addition to the \$418,250 equalization payment, husband agreed to make an "asset appreciation consideration payment" to wife of \$46,500 upon the court's approval of the MSA.

In August 2007 the parties stipulated that husband shall pay spousal support of \$1,296 per month. Husband claims that, starting in October 2007, he made 54 monthly payments in the required amount. "The final support payment was made in December 2012."

In response to wife's order to show cause, in March 2011 husband declared that he had stopped making the monthly equalizing payments in July 2008 because he had "suffered a major financial setback." Wife, on the other hand, declared that husband had stopped "paying . . . the \$6,000 monthly amount" in December 2007.

In February 2012 husband declared that the residence was "sold in late 2011 for \$1,405,000 in a Short-Sale." He received "not one dime" from the sale. "A 'short sale' is a sale of property for a price that is less than the amount of debt on the property, resulting in a shortfall of sales proceeds to pay off the existing loans." (4 Miller & Starr, Cal. Real Estate

(3d ed. 2013) Deeds of Trust and Mortgages, § 10:120, p. 10-423.) Husband alleged that he had "financed the equalizing payment[s] and support payments by maxing out the equity lines on [the residence]."

On March 1, 2012, wife filed an income and expense declaration showing that since July 2011 she had been employed as an account executive for a furniture company. Her average monthly gross income was \$3,750. Her average monthly expenses were \$6,160. On March 7, 2012, husband filed an income and expense declaration showing that since January 2009 he had been employed as President of Global Radio Network. His average monthly gross income was \$6,000. His average monthly expenses were \$7,942.29. He had only \$1,000 in assets.

On March 7, 2012, the parties signed what they referred to as a "global settlement" of the issues raised in wife's order to show cause and husband's responsive declaration. The settlement, hereafter "global settlement," was approved by the court. The parties agreed that spousal and child support are "set at 0," that there are no spousal or child support arrears, and that husband "shall contribute to wife's attorney fees in the sum of \$15,000." The parties also agreed that husband "shall begin to make monthly payments" on the \$240,000 unpaid balance of the equalization amount and the \$15,000 in attorney fees. The monthly payment for both was set at \$4,000, and the first payment was due on May 1, 2012. The unpaid balance for both would accrue interest at the rate of 12 percent per annum. If husband failed to timely make a monthly payment, the entire unpaid balance would become due and payable. The global settlement further provided: "Upon payment in full of this debt, the court's jurisdiction to award spousal support to [wife] shall forever terminate. Provided [husband] is current on his monthly payment, no spousal support shall be ordered."

In June 2012 the trial court issued an order to show cause why spousal support should not be reinstated. In her application for the order, wife declared that husband had failed to make the May and June 2012 payments pursuant to the global settlement. Wife claimed that she "needs spousal support reinstated so she has funds with which to pay her living expenses."

In July 2012 the trial court ordered husband to pay wife "the sum of \$240,000 forthwith" and to pay wife's counsel "the sum of \$15,000 forthwith." The court later clarified that the \$15,000 attorney-fee award in the global settlement was not spousal support but "was for the purpose of obtaining support orders."

In August 2012 husband filed for bankruptcy under Chapter 13. He declared that he was unemployed and "in a financial crisis." A deal to "pay [his] salary was to close March 16, 2012, but the deal fell-through." In October 2012 the bankruptcy petition was dismissed. In November 2012 husband found employment on a temporary basis and was earning \$5,000 per month.

In April 2013 the trial court ordered husband to pay wife temporary spousal support of \$490 per month commencing retroactively on July 1, 2012. In June 2013 the court ordered husband to pay wife permanent spousal support of \$200 per month commencing retroactively on July 1, 2012, "until his total spousal support payments in this case reach fifty-four months."

Husband refiled for bankruptcy under Chapter 13. In April 2014 husband filed in the trial court a request for clarification that (1) "the equalization payments ordered are a division of community property and not an order of spousal support," and (2) "as all court-ordered payments have been made, no further support is due." Husband sought the clarification because the bankruptcy court had granted the parties "relief from the automatic stay [of state proceedings] for the purpose of obtaining a state court clarification regarding the characterization of any and all prepetition debts arising in the course of their marital dissolution proceedings" Debts arising from the division of community property in dissolution proceedings are generally dischargeable in bankruptcy. Spousal support obligations, on the other hand, are not dischargeable. (*In re Marriage of Lynn* (2002) 101 Cal.App.4th 120, 125; 11 U.S.C. § 523(a)(5) [a bankruptcy discharge does not discharge a debt "for a domestic support obligation"]; (*Id.*, § 101(14A)(B) ["domestic support obligation" means a debt owed to a former spouse that is "in the nature of alimony, maintenance or support . . . without regard to whether such debt is expressly so designated"].)

Trial Court's Ruling

At the hearing on the request for clarification, the trial court noted that the MSA provides, "Wife's needs cannot be met without the payment of spousal support." The MSA also provides that, for a 12-month period after its approval by the court, wife will not receive spousal support but will receive the monthly equalizing payments. Therefore, the court reasoned, "it's crystal clear . . . that the parties' intent was that the equalizing payments were serving a domestic support function." "[I]t's crystal clear that the wife was foregoing an immediate payment of spousal support to get the equalizing payments that therefore . . . [were] serving a domestic support function." The court continued, "[I]t's crystal clear to me, as well, if you look at the March 7, 2012 [global settlement] that there was a continued forbearance of any kind of demand for spousal support, and that there was going to be an advancing or a paying down of the equalizing [amount] in lieu of support. And part of that includes the need-based [attorney] fee [of \$15,000]. [¶] . . . This is a need-based fee based upon the parties' agreement that the wife has needs. So I find that both the attorneys' fees and the equalizing payments have served as a domestic support function."

Appellate Review is Limited to Matters before the Trial Court

The judge who ruled on husband's request for clarification, Matthew P. Guasco, was new to the case. Prior proceedings had been conducted by Judge Roger L. Lund. Most of the documents in the 329-page appellant's appendix were not before the trial court (Judge Guasco) when it made its ruling. At the hearing on the request for clarification, the court stated that its ruling was based on the MSA, the global settlement, prior court rulings, and "the pleadings." Section 420 of the Code of Civil Procedure defines "pleadings" as "the formal allegations by the parties of their respective claims and defenses, for the judgment of the Court." We assume that when the court referred to "the pleadings," it meant the moving and responding papers relating to husband's request for clarification. The court said that it had read these papers, which included the MSA, the global settlement, relevant trial court and bankruptcy court rulings, and supporting declarations by both parties. In its written order of clarification, the court stated that it had "received and considered [oral] argument from both counsel" and was ruling "based upon the pleadings submitted by both parties."

Husband contends that the trial court erroneously "ruled summarily from the bench on the pleadings alone." He argues that the court should have considered evidence of his ability to pay spousal support, wife's alleged history of domestic violence, and " 'the balance of the hardships to each party.' " In addition, the court "should . . . have requested live testimony under Family Code section 217."¹ At the hearing the court stated, "I'm exercising my discretion under Family Code Section 217 to rule based on the pleadings."

Husband did not request live testimony or object to the trial court's limitation of the matters it would consider. He has therefore forfeited his claim that the court should have received live testimony and considered additional matters. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.)

We restrict our review to the matters before the trial court, i.e., the parties' moving and responding papers and oral argument. "It has long been the general rule and understanding that 'an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration.' [Citation.]" (*In re Zeth S.* (2003) 31 Cal.4th 396, 405.)

Standard of Review

The parties agree that the standard of review is de novo or independent review. "When a trial court's interpretation of a written agreement is appealed and no conflicting extrinsic evidence was admitted, the interpretation of the contract is a question of law which we review de novo. [Citations.]" (*Nava v. Mercury Cas. Co.* (2004) 118 Cal.App.4th 803, 805.)

Principles of Contract Interpretation

"[T]he interpretation of a settlement agreement is governed by the same principles applicable to any other contractual agreement [citation]" (*Winet v. Price* (1992) 4

¹ Family Code section 217, subdivision (a) provides: "At a hearing on any order to show cause or notice of motion brought pursuant to this code, absent a stipulation of the parties or a finding of good cause pursuant to subdivision (b), the court shall receive any live, competent testimony that is relevant and within the scope of the hearing and the court may ask questions of the parties."

Cal.App.4th 1159, 1165.) "The fundamental rules of contract interpretation are based on the premise that the interpretation of a contract must give effect to the 'mutual intention' of the parties. 'Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation. (Civ.Code, § 1636.) Such intent is to be inferred, if possible, solely from the written provisions of the contract. (*Id.*, § 1639.)' " (*Waller v. Truck Ins. Exch., Inc.* (1995) 11 Cal.4th 1, 18.) "If contractual language is clear and explicit, it governs. [Citation.]" (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264.)

The MSA

The contractual language of the MSA is clear and explicit. The parties' equity in the residence was \$695,000. Wife agreed to convey to husband her community property interest in the residence. To equalize the division of the community assets, husband agreed to pay wife \$418,250. Husband had already paid \$48,613, and the remainder would be paid in monthly installments of \$6,000 without interest. The MSA provides: "By the provisions of this section [the section requiring the equalization payment], we intend to effect an equitable division of our community assets."

The \$418,250 equalization payment was not transformed into spousal support merely because husband's payment of support was deferred for 12 months. The MSA indicates the reason for the deferral: "For the last five years, . . . Husband has been developing a business known as Planet Halo and the parties have been living off the principal and interest of their other investments as Planet Halo has provided minimal or no income in its start-up stages." "The parties acknowledge that the current situation (minimal income to Husband) is not representative of Husband's ability to earn. In twelve months, the parties agree to utilize Husband's actual income at that time or a minimum of \$100,000 per year imputed income, whichever is greater, in order to determine spousal support." In other words, the parties did not determine the amount of spousal support when they negotiated the MSA because they believed that husband's earning potential was more than his minimal earnings at that time. The MSA states that "[h]usband's highest annual income was \$377,000.00" and his average annual income during the marriage was \$90,000. The parties agreed that the \$90,000 figure

"does not reflect Husband's ability to earn as said average includes years in which Husband had no earned income while he was establishing Planet Halo."

Wife was not prejudiced by the 12-month deferral of spousal support. Under the MSA she was entitled to support for a maximum of 54 months, so it made no difference when she started receiving it. The deferral was actually to wife's benefit because in 12 months husband could be earning far more than his "minimal income" when the MSA was signed, resulting in a greater amount of spousal support. Moreover, wife did not need spousal support during the 12-month deferral because the MSA required husband to pay her \$46,500 "as an asset appreciation consideration payment" upon the court's approval of the MSA. This was equivalent to 36 months of spousal support at the later stipulated amount of \$1,296 per month. Thus, the trial court erroneously concluded that "wife was foregoing an immediate payment of spousal support to get the equalizing payments that therefore . . . [were] serving a domestic support function." Wife was foregoing an immediate payment of spousal support because she hoped to get a greater amount of support after the 12-month deferral.

The equalizing payments should also not be characterized as spousal support because they did not terminate upon wife's remarriage or death or husband's death. They continued until the equalization amount was paid in full. Family Code section 4337 provides, "Except as otherwise agreed by the parties in writing, the obligation of a party under an order for the support of the other party terminates upon the death of either party or the remarriage of the other party." In the MSA the parties agreed that "spousal support shall continue until remarriage, death of either party or for a period of fifty-four months of payments, whichever shall first occur."

The Global Settlement

Although the equalizing payments were not spousal support under the MSA, the global settlement converted them into the functional equivalent of spousal support. We recognize that the global settlement provides, "Spousal support is set at 0. There are no spousal support arrears." But the parties intended that the equalizing payments would be a substitute for spousal support. This intent is shown by the following excerpts from the

global settlement: "Provided [husband] is current on this monthly payment [i.e., the monthly \$4,000 equalizing payment], [wife] shall not file any motion or order to show cause seeking spousal support." "Upon payment in full of this debt [i.e., the remaining balance of \$240,000 on the MSA equalization amount of \$418,250], the court's jurisdiction to award spousal support to [wife] shall forever terminate. Provided [husband] is current on his monthly payment, no spousal support shall be ordered."

The above excerpts from the global settlement put husband on notice that the monthly \$4,000 equalizing payments were serving a domestic support function. If husband were current on the payments, wife would be precluded from seeking spousal support. Upon payment in full of the remaining balance (\$240,000) of the equalization amount, the court would lose jurisdiction to order spousal support. The clear implication of these provisions is that if husband were not current on the equalizing payments, wife could seek and the court could order spousal support. If the equalizing payments were merely for a debt arising from the division of the parties' community property, wife's recourse for nonpayment would not be to seek spousal support. Instead, her sole recourse would be to obtain a judgment for the remaining balance of the equalization amount and to seek enforcement of that judgment.

It is of no consequence that the global settlement does not expressly characterize the monthly equalizing payments as spousal support. A "domestic support obligation" means a debt owed to a former spouse that is "in the nature of alimony, maintenance or support . . . *without regard to whether such debt is expressly so designated.*" (11 U.S.C. § 101(14A)(B), italics added.)

Attorney Fees

In the global settlement husband agreed to pay wife's attorney fees of \$15,000. "Attorney's fees follow the nature of the principal award. If the principal award is a domestic support obligation, the attorney's fees incidental to obtaining the domestic support obligation are also treated as a domestic support obligation. [Citation.]" *In re Uzaldin* (Bankr. E.D. Va., 2009) 418 B.R. 166, 172.) The attorney fees here were incurred to obtain

the functional equivalent of spousal support. The court that awarded the fees said that they were "for the purpose of obtaining support orders."

The attorney fees are therefore a debt "for a domestic support obligation." (11 U.S.C. §§ 523(a)(5), 101(14A)(B).) If "attorney's fees were incurred for the acquisition of alimony, maintenance or support, either for the spouse or children, then said attorney's fees so incurred should take on the character of said obligation and be nondischargeable. In the event . . . attorney's fees were incurred for the purposes of determining property division or determining the settlement awards then said attorney's fees should take on the character of the type of award for which the attorney's fees were incurred, and be dischargeable." (*In re Duncan* (Bankr. N.D. Okl. 1991) 122 B.R. 434, 435-436.)

Disposition

The order of clarification stating that husband's obligations to make equalizing payments and to pay wife's attorney fees of \$15,000 "have served as domestic support" is affirmed. Wife shall recover her costs on appeal.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Matthew P. Guasco, Judge
Superior Court County of Ventura

Wendy C. Lascher, John A. Hribar, Joshua S. Hopstone; Ferguson, Case, Orr,
Paterson, for Appellant.

Michael J. Smith, for Respondent.